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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,826	02/19/2002	Patrick Jay Allen	8613M	6590

27752 7590 04/07/2005

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/078,826

Applicant(s)

ALLEN ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-7, 9-16, and 18-20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for providing a visible and tactile signal, does not reasonably provide enablement for providing an audible signal or providing the signal only when urine is present. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. The specification does not provide support for the following aspects of the claim:

- an audible signal - The specification on pages 4-8 describes suitable materials for a visual signal and a tactile signal (i.e. change in shape), but does not disclose suitable materials for an audible signal
- providing the signal only when urine is present – The specification on page 6, lines 29-30, in particular, indicate the urine sensitive component 66 may sense, or respond to, any of the components or properties of urine, including water. The specification does not limit the invention to urine detection only, and thus the claims do not have support for this limitation.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-7, 10-16, and 19-20 is rejected under 35 U.S.C. 102(b) as being anticipated by Ehrenkranz USPN 5222809.

As to claim 1-3, 5, 7, 10, 13, 14, and 19, Ehrenkranz discloses a wearable article (Figures 1, 2, 5, 7) comprising a temperature indicator (Abstract) and provides a visible, audible, or tactile signal (col. 3, lines 28-38) when a wearer's body temperature is above a predetermined threshold temperature (col. 3, lines 42-45 and col. 6, lines 39-41), the fever indicatory determining the wearer's body temperature from urine expelled from the wearer's body (Abstract; col. 2, lines 8-15; col. 3, lines 10-67). Ehrenkranz discloses an

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outer cover , absorbent middle layer, and liquid permeable top layer (col. 2, lines 53-54, col. 3, lines 3-6). In additional Ehrenkranz discloses the device can be fixed to a diaper (col. 2, lines 50-53). The article is capable of being discarded after one use, thus the article is considered disposable as broadly as claimed. Ehrenkranz discloses the monitoring system is activated by the presence of a quantity of urine, which is immobilized in the superabsorbent material(col. 2, lines 7-11; 54-57). Ehrenkranz discloses the wearer's body temperature is determined by the immobilized urine (Abstract),

As to claims 4, 15, and 20, see col. 2, lines 11-15 and lines 53-62.

As to claims 6 and 16, see col. 3, lines 3-7.

As to claims 11 and 12, Ehrenkranz discloses the sensor can be attached to a diaper via adhesive 12, which is located on the lower surface of the device (Figure 2). Thus, the device would be attached to a diaper topsheet to be operable, and is removable from the topsheet.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).


9. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrenkranz in view of Rezai et al. USPN 5713881. The examiner interprets the superabsorbent as part of the apparatus for measuring the core body temperature persons using the device via expelled urine. Ehrenkranz discloses the present invention substantially as claimed. However, Ehrenkranz does not disclose the use of plasticizers. Rezai discloses the use of plasticizers for the benefit of providing flexibility to the superabsorbent so that it is easier to handle in manufacturing (Rezai col. 2, lines 50-56). It would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate a plasticizer in the invention of Ehrenkranz for the benefits disclosed in Rezai.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

April 4, 2005